
(2001) 04 AP CK 0137
In the Andhra Pradesh High Court
Case No : WA No. 168 of 2001

Union of India and others

APPELLANT

Vs

M.S. Rao

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38, 38(1)
Constitution of India, 1950 — Article 14, 21

Citation : (2001) 4 ALD 22 : (2001) 3 ALT 579

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. P. Phalguna Rao, Additional SC for CG, for the Appellant; Mr. J.V. Prasad, for the Respondent

Judgement

S.B. Sinha, C.J.—The short question which arises for consideration in this appeal arising out of a judgment and order dated 13-10-2000 passed by a learned single Judge of this Court in Writ Petition No.6993 of 2000 is as to whether an order in terms of Rule 38 of the Central Civil Services (Pension) Rules, 1972 holding the respondent herein as permanently incapacitated for performing the service is valid in law.

2. The respondent was appointed as constable in the Central Reserve Police Force in the year 1983. He was later on promoted to the post of lance naik. He was, however, declared temporarily unfit on 9-1-1996. He was under treatment from 9-1-1996 to 18-7-1996. The Chief Medical Officer of Base Hospital-11, Hyderabad in terms of a letter dated 17-8-1996 recommended for his invalidation from the post. He, however, was given guard command duty till 17-1-1997. The Departmental Rehabilitation Board recommended for his retention for one year as he was being sent to the hospital for regular check up. The Chief Medical Officer (SG) reported on 9-5-1998 that the respondent was fit for active duty by continuing on anti-hypertensive drugs. He, however, was again referred to Medical Invalidation Board whereupon in terms of a report dated

27-7-1998 it was opined that the may be continued in service with regular treatment. Yet again he was referred to Osmania General Hospital and the doctors opined that he is fit for duties which was accepted by the Chief Medical Officer of Base Hospital-II. However, again a Medical Board was constituted on 18-1-1999. The Board curiously on 25-3-1999 held that the respondent is permanently incapacitated from further service in the Force whereupon an invalidation notice dated 5-4-1999 was issued. The respondent got himself examined in Nizams Institute of Medical Sciences, Hyderabad and a Board of medical experts opined that the respondent is fit to carry on his duties. Yet again on the basis of such report a Medical Board was constituted and the said Medical Board again found him unfit for duty for hyper tension treatment. The respondent, however, again was sent to the Board of Gandhi Hospital whereupon the impugned order dated 23-3-2000 was issued. The respondent filed the writ petition inter alia contending that the 3rd respondent in the writ petition being appellant No.3 herein had been trying to see that he be removed from service and with that end in view had been trying to influence the authorities. It was contended that at all levels the experts opined in his favour; there is no valid or cogent reason to issue the said order dated 23-2-2000.

3. The case of the appellants, however, was that the respondent had been suffering from uncontrollable hyper tension, fatty degeneration of liver dylipemias, diastolic dysfunction of heart and poor effort tolerance VCS and he was under treatment with effect from 9-1-1996. Rule 38(1) of the said Rules reads thus:

Invalid Pension :--(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

4. The learned single Judge in his judgment under appeal came to the conclusion that hyper tension or blood pressure is not such a disease which would not be controllable under proper medication.

5. The learned Counsel for the appellants would contend that Rule 38 of the Rules should be construed having regard to the nature of the duty to be performed by the respondent and in that view of the matter the learned single Judge erred in passing the impugned order.

6. The factual matrix as noticed hereinbefore clearly shows that the respondent has been subjected to examination by various medical boards constituted from time to time. The appellants herein and in particular the appellant No.3 is not a medical expert. He is bound by the expert opinion given from time to time.

7. It further appears to us that the respondent has been subjected to frequent examinations by the medical boards from time to time without any rhyme or reason whatsoever. It appears that a medical board was constituted in terms of office order No.M.III-1/99-EC.I, dated 20-7-1999 even after he was declared medically fit by the doctors of base Hospital II and NIMS. In the said letter it was

stated:

In view of the contradictory opinion of the Medical Boards of CRPF and NIMS, it has become mandatory to constitute a Review Medical Board to examine the case thoroughly and give a judicious opinion after taking into consideration the ailments of the individual and the nature of duties he was to perform as a combatant in various parts of the country. Brief details of duties required to be performed by the individual are furnished below:--

- (i) To attend daily physical training -running 5 kms. and exercise/parade;
- (ii) To walk/run a distance of 10-15 kms. daily carrying bullet proof jacket weighing about 10 -13 kgs, personal weapons with ammunitions in an undulated hilly, jungle and hostile/ militant infested areas;
- (iii) Running in a very fast speed to take cover of fired upon by militants;
- (iv) Any other duties assigned from time to time as a combatant.

In view of the above, it is requested that a special Medical Review Board as required vide Chapter 9 of CCS (Pension) Rules may kindly be constituted to examine the individual to assess his suitability/fitness to continue in CRPF as a combatant. Place, date and time of constitution of the special Medical Review Board may kindly be intimated to this office so that the individual may be directed to appear before the medical board accordingly. After constitution of the medical board, a copy of the board proceedings may kindly be sent to this office for taking follow up action please.

8. Pursuant thereto the Medical Board so constituted found the respondent fit. Yet again the respondent was asked to appear before a Review Medical Board in terms of letter dated 29-11-1999 at Gandhi Hospital, Secunderabad. He, pursuant to the said direction presented himself for examination by the Medical Board. It was certified by a three member committee thus:

Certified that we the members of Regional Medical Board, Gandhi Hospital, Secunderabad have carefully examined and investigated Sri N.S. Rao, s/o late Krishna Murthy, aged 39 years working in the Additional DIGP Group Centre, CRPF, Ranga Reddy, Secunderabad is having Mild Hypertension without significant ST-T change in TMT. He is fit for duty with And Hypertensive Treatment.

9. Despite the same, it appears, Sri M.C. Joseph, the 4th appellant again sought for advice from one of the members of the regional medical board being Dr. E.A. Santosh Kumari, stating thus:

A member of the Force, like Ex-const N.S. Rao is required to perform the following strenuous duties in North East/ J and K where 85% personnel performing anti terrorist/militant duties:-

- (a) To walk every day 10 to 15 kms. with rifle and 5 to 10 kgs. weight in the pack

in hilly/difficult areas.

(b) Run 3 to 5 kms. with rifle to chase militants/terrorists when they are fired upon.

(c) To crawl in a high speed nearly 500 to 1000 mtrs. during attack/ambush.

(d) To climb top hills in search of militants/terrorists.

Kindly give your expert revised medical opinion basing on the above duties whether the said Ex-constable can perform above duties with medical and without any danger to his life with the disease.

10. In reply to the said letter the Superintendent of Gandhi Hospital, Secunderabad informed to the 4th appellant:

The Board Members after going through the duties and responsibilities vide the Additional DIG Letter No.M-III-I/99-ECI, dated 29-3-2000. We have come to the conclusion that the incumbent cannot undergo such strenuous exertion as mentioned without danger to his life (item No.2) with or without treatment.

11. The attitude on the part of the appellants herein cannot be appreciated apart from the fact that the action impugned in the writ petition clearly suffers from the grave legal infirmity.

12. Rule 38 of the said rules has to be construed strictly. Permanent incapacitation is the sine qua non for invoking of the said rule.

13. Temporary incapacitation or suffering from some disease which might have warranted undergoing treatment by an officer cannot attract the said provision.

14. The right to continue in service is a fundamental right under Article 21 of the Constitution of India. It has been held in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

.....The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

15. Rule 38 of the said Rules must, therefore, be construed on the touch stone of Article 21 of the Constitution. Furthermore, any action of the State purporting to act under the said provision must also be reasonable having regard to the principles adumbrated in Articles 14 and 21 of the Constitution. The respondent had been found physically fit not only by NIMS but also by the medical board constituted for that purpose which as noticed hereinbefore had studied about the duties and functions performed by the holder of an office of the constable (Lance Naik).

16. The Medical Board constituted under Chapter IX of the Rules, in any event, must be held to be aware of the functional requirements of the officers serving under the CRPF organisation. Despite a favourable report to which the appellants were bound, the respondent had again been sent to the Gandhi Hospital. The respondent was examined by a Medical Board.

17. There was thus no necessity for the 4th appellant herein to writ a DO letter to the Superintendent of the said Hospital nor the said authority had any jurisdiction to take a contra decision in his individual capacity. He was merely a member of the Board and the opinion being that of the Board it was not for the Superintendent of the said Hospital alone to say whether while examining the respondent the Board had taken into consideration the functional requirement of the constable. In his letter dated 20-3-2000 the 4th appellant had specified the functions required to be performed by a member of the force in North-East/Jammu and Kashmir but not at a station like Hyderabad. Even in a disciplined Force like CRPF where strenuous duties are required to be performed by the CRPF personnel, a human touch to the problems faced by one of the members of the Force cannot be said to be absolutely unwarranted. The respondent, to say the least was treated very unfairly. Not only Rule 38 was misinterpreted, there appears to be some truth in the allegation that somehow or the other the appellants herein wanted to get rid of him. In any event, having regard to the fact that the appellants herein are bound by the decision of the experts, the impugned order, in our opinion, has rightly been set aside by the learned single Judge. We may also note that in *Sulochana Vs. APSRTC, Hyd.* and another, , it was held:

There are number of congenital diseases and diseases with constitutional disorders which disable a person to lead a normal life. That non-disabled do not understand the disabled is a thing of the past. Progressive ideas about human development, rapid advances in technology and rejuvenated pursuit of human rights have resulted in a "new understanding" of the rights of the disabled. There are even international covenants and charters protecting the rights of the disabled.

18. For the reasons aforementioned, we do not find any merit in this appeal which is accordingly dismissed with costs. Advocate's fee assessed at Rs.2,000/- (Rupees two thousand only).